Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

GEORGE BLAISDELL, PETITIONER

v.

CITY OF ROCHESTER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is Petitioner who asserts the illegal confiscation of his personal property by the government and then unsuccessfully pursues the claim in state court for conversion either barred by the *Rooker-Feldman* doctrine or collaterally estopped from thereafter seeking in federal court just compensation for the taking of his property under the fifth and fourteenth Amendments where the jury's verdict against him in the state court action for conversion was founded upon the government's lack of intent to deprive him of the property, an element of proof unnecessary to prove a federal taking claim?

2. Did Petitioner lose his federally guaranteed right under the fifth and fourteenth Amend-ments to seek just compensation from the government for its taking of his personal property where before realizing that remedy in federal court he was forced to pursue in state court an action of conversion for this deprivation, one which linked the proof of his ownership of the property to the government's *intent* to deprive him of it?

3. As a matter of a pragmatic federalism, should this Court in civil rights actions limit the force of the *Rooker-Feldman* doctrine to only those actions which seek a direct order to a state court to change the result it has already reached?

4. Is the ripeness requirement of *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172(1985) for a federal taking claim met by the Petitioner's unsuccessful pursuit of a claim for conversion in state court, one which linked the proof of his ownership of the property to the government's *intent* to deprive him of it?

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CITATIONS OF OPINIONS AND ORDERS

The unpublished judgment of the Court of Appeals for the First Circuit in *George Blaisdell v. City of Rochester*, C.A. No. 03-2075, dated March 30, 2004, affirming the district court's judgment of dismissal, is set forth in the Appendix hereto(App. 1-2).

The unpublished Order of the United States District Court for District of New Hampshire in *George Blaisdell v. City of Rochester* (Civil Action No. 03-138-JD), dated June 30, 2003, dismissing Blaisdell's complaint, is set forth in the Appendix hereto(App. 3-8).

The unpublished Order of the United States District Court for District of New Hampshire in *George Blaisdell v. City of Rochester, New Hampshire et al.* (Civil Action No. 97-82-M), dated January 4, 1999, granting summary judgment to the defendants on Count 1 of Blaisdell's complaint seeking just compensation for the municipal defendants' taking of his personal property, is set forth in the Appendix hereto(App. 9-16).

The state court jury's answers to the Special Verdict Form in *George Blaisdell v. City of Rochester*, (N.H. Strafford County Docket No. 00-C-296), dated March 6, 2002, is set forth in the Appendix hereto(App. 17-19).

BASIS FOR JURISDICTION IN THIS COURT

The judgment of the United States Court of Appeals for the First Circuit affirming the District Court judgment of dismissal was entered on March 30, 2004(App. 1).

This petition for writ of certiorari by Blaisdell is filed within ninety (90) days from that date. 28 U.S.C. Section 2101(c).

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1254(1).

CONSTITUTIONAL, STATUTORY AND RULE PROVISIONS IMPLICATED BY THIS PETITION

United States Constitution, Article III, Section 1:

> The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish....

United States Constitution, Article IV, Section 1:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State....

United States Constitution, Amendment V:

> ...nor shall private property be taken for

public use without just compensation.

United States Constitution, Amendment XIV, Section 1:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property,without due process of law....

28 U.S.C. Section 1331:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. Section 1343(a)(4):

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
> ...
> (3) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. Section 1738:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full

> faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Civil Rights Act–42 U.S.C. Section 1983:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

STATEMENT OF THE CASE

From December of 1970 until February 23, 1993, the Petitioner George Blaisdell ("Blaisdell") lived at 125 Charles Street in the City of Rochester, New Hampshire ("the premises"), continuously, openly, and in defiance of all others purporting to claim a legal title thereto or a possessory interest therein. On February 23, 1993, the premises suffered a fire which damaged the roof and other parts of the dwelling house.

At the time of the fire in February of 1993, Blaisdell was in lawful possession of the premises under New Hampshire law. In addition, Blaisdell had a legally

recognized property right to possession of his personal property which was located both inside the dwelling at 125 Charles Street and upon its grounds. The premises consisted of a house with a detached garage and Blaisdell stored many personal items of substantial value in the house and garage as well as on the grounds of the premises.

Long before this fire, as early as 1985, the Respondent City of Rochester ("the City") had sought to obtain a tax title to Blaisdell's premises; and the continuing issue of title to the premises was being litigated between Blaisdell and the City at the time of the fire. By February of 1993, when the fire occurred, the courts of New Hampshire had ruled that the City could not legally dispossess Blaisdell of the premises.

In the fire's aftermath, on February 25, 1993, the City began an investigation of the fire by bringing in an excavator which proceeded to demolish Blaisdell's dwelling house, garage and all of his personal property located within these structures. Blaisdell's pickup truck was taken from the premises on orders of the City. The next day, on February 26, 1993, the City "seized" the premises. In early April of 1993, three motor vehicles belonging to Blaisdell were seized by the City and towed from the premises and impounded at a local garage. The City never returned these vehicles to Blaisdell. On April 5, 1993, the City over Blaisdell's objection completed the demolition of Blaisdell's property, demolition which rendered worthless all of Blaisdell's personal property which remained there.

In April of 1996, Blaisdell sued in federal district court for the District of New Hampshire the City, its

Manager, Police Chief, the City Solicitor and one of its Councilman seeking damages and alleging various federal and state claims arising from their demolition of his property. He withdrew the complaint in August of 1996 and consistent with New Hampshire's Savings Statute, RSA 508:10, brought another complaint in federal court within one year against these same municipal defendants.(*Blaisdell v. City of Rochester et al.*, Civil Action No. 97-82-M).

In that complaint, Blaisdell posited jurisdiction of the federal district court on 28 U.S.C. Sections 1331 and 1343(a)(4), and alleged *inter alia* that these municipal defendants had unlawfully demolished his dwelling home and garage and had misappropriated or converted to their own use his personal property located there. He characterized their actions as an unconstitutional taking of his land and personal property without just compensation and without due process in violation his rights under the fifth and fourteenth Amendments to the United State Constitution as well as his civil rights under 42 U.S.C. Section1983. In one of his pendent state claims alleging the commission of various common law torts by the defendants, Blaisdell also alleged that they had converted to their own use his personal property "by exercising wrongful dominion and control over said property which exercise was inconsistent with Blaisdell's rights of title and/or possession of the said property."

The City together with the municipal defendants then moved for the entry of summary judgment in their favor on Blaisdell's due process/taking claims on the ground that they were as yet unripe because he had not

exhausted his state legal and administrative remedies. On January 4, 1999, the District Court, McAuliffe, J., granted the municipal defendants' summary judgment motion (App.9-16). Relying upon this Court's decision in *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172(1985), the motion judge ruled that in order to realize his federal takings claim, a property owner such as Blaisdell must first pursue the available state procedures for obtaining compensation for his alleged loss(App.13-14).

The District Judge found that Blaisdell

> has neither demonstrated that the State of New Hampshire provides him with no adequate post – deprivation remedy (whether statutorily or at common law) nor has he shown that availing himself of such a remedy would be futile or provide him with inadequate compensation.

(App.14). Judgment accordingly entered against Blaisdell on his federal takings claim(App. 14-15). On October 19, 1999, Judge McAuliffe followed this up with another ruling which entered summary judgment against Blaisdell on his remaining federal claims. The District Judge declined to exercise jurisdiction over Blaisdell's pendent state claims, dismissing them without prejudice to Blaisdell bringing them in state court.

Within one year of this ruling and pursuant to the Savings Statute, RSA 508:10, Blaisdell began a civil action in the Superior Court of Strafford County, New Hampshire against the City and the other municipal

defendants alleging the misappropriation of his personal property in the wake of the fire and seeking damages for conversion, malicious prosecution, the intentional infliction of emotional distress and civil conspiracy. A motion for summary judgment was subsequently entered in favor of the individual municipal defendants and three of the four counts alleged against the City. A jury trial ensued on Blaisdell's remaining claim of conversion against the City.

On March 6, 2002, the jury returned with a special verdict in favor of the City(App. 17-19). As the jury's special verdict form demonstrates, the question of whether Blaisdell owned or had a right to possess or control any of the personal property located on the premises on or after April 4, 1993, was coupled with the jury question of whether the City through its agents or employees had *"intentionally* destroyed [this] personal property...and that they knew [Blaisdell] claimed the possessory interest." (App. 17)(emphasis supplied).

As for Blaisdell's three motor vehicles, the jury question of whether Blaisdell owned them or had a right to possess or control them was confused with the jury question of whether the City had *"intentionally* retained [them] on or after April 4, 1993, and denied [Blaisdell] possession"(App. 18)(emphasis supplied). In addition, the jury found for the City on its affirmative defenses of abandonment, public duty and authorization(App. 18-19). Finally, the jury also found that the City was 10% "at fault" for the losses of personal property which Blaisdell had sustained(App. 19).

Following a refusal by the Supreme Court of New Hampshire on October 30, 2002, to consider his appeal from this judgment, Blaisdell timely filed this *pro se* civil rights action against the City in the federal district court for the District of New Hampshire. Positing jurisdiction once again on 28 U.S.C. Sections 1331 and 1343(a)(4), Blaisdell asserted that he had now exhausted the state remedies available to him to redress his federal takings claim and that these remedies were inadequate to protect his constitutional rights since they required him to prove *intent* by the City to deprive him of his personalty and to respond to affirmative defenses having nothing to do with a federal takings claim. Blaisdell accordingly sought an award of damages under 42 U.S.C. Section 1983, for the City's taking of his personal property without providing him just compensation as guaranteed him under the fifth and fourteenth amendments to the United States Constitution.

The City moved to dismiss Blaisdell's taking claim based on the doctrine enunciated by this Court in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413(1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462(1983) that lower federal courts lack jurisdiction to review state court judgments or claims "inextricably intertwined" with state court judgments("the *Rooker-Feldman* doctrine"). It argued that the doctrine prevented the federal district court from considering Blaisdell's taking claim because of the state court judgment against him on his conversion claim, based upon the same alleged property loss. In the alternative, the City asserted that Blaisdell was collaterally estopped from relitigating factual issues which the state court action had fully and fairly

resolved.

On June 30, 2003, the District Court (DiClerico, J.) granted the City's motion(App. 3-8). It reasoned that to show a cognizable takings claim in federal court, Blaisdell "must allege facts to show that he had a legally recognized interest in [the personal] property that was taken by the City without just compensation" (App. 6). However, Judge DiClerico ruled that

> the jury in the state proceeding found that he did not own or have the right to possess or control any of the personal property he claimed at 125 Charles Street. For Blaisdell to succeed on his takings claim in this court, the factfinder would necessarily have to decide that Blaisdell owned or had property rights in the personalty he claims so that the state determination was wrong. Such a determination is therefore inextricably intertwined with the state court determination and is barred by *Rooker-Feldman*.

(App. 6-7).

On March 30, 2004, the Court of Appeals for the First Circuit affirmed this dismissal in an unpublished judgment, essentially for the reasons stated in Judge DiClerico's order of June 30, 2003(App. 1-2).

Blaisdell has now brought to this Court his petition seeking a writ of certiorari to the United States Court of Appeals for the First Circuit.

ARGUMENT SUPPORTING ALLOWANCE OF THE WRIT

1. This Court's Superintendence of the Federal Judiciary To Insure That It Provides Meaningful Remedies To Civil Rights Plaintiffs Warrants the Granting Of This Petition.

In *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706, 716(1996), this Court recognized that federal courts have a fundamental duty to exercise the jurisdiction they were given by Congress under Article III of the Constitution. *Id.* As it observed in *Wisconsin v. Constantineau*, 400 U.S. 433, 437-438(1971), Congress could have routed all federal constitutional questions through the respective state court systems, saving to this Court the final say when it comes to the review of state court judgments. *Id.* But the first Congress did not so and instead created a federal system of courts which are empowered to hear *inter alia* claims by plaintiffs seeking a redress of their federal constitutional rights and those rights given them by federal civil rights legislation. *Id.*

This Court has repeatedly acknowledged that the federal courts have a "virtually unflagging obligation...to exercise [this] jurisdiction given them." *Quackenbush*, 517 U.S. at 716. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 821(1976). *England v. Louisiana Bd. of Medical Examiners*, 375 U.S. 411, 415(1964). *Wilcox v. Consolidated Gas Co.*, 212 U.S. 19, 40(1909). *Cohens v. Virginia*, 19 U.S. 264(1821).

The *Rooker-Feldman* doctrine, however, represents an exception to this general duty of a federal district court to exercise its jurisdiction consonant with the grants of power given it by Congress under Article III and by federal civil rights legislation. In *Rooker*, it was held that only the Supreme Court, and not the lower federal courts, has jurisdiction to review state court decisions. *Rooker*, 263 U.S. at 416. In *Feldman*, this Court further held that federal district courts may not exercise jurisdiction over facially constitutional issues which are "inextricably intertwined" with a state court judgment since this would be tantamount to a federal district court sitting in direct review of the decisions of the state tribunal. *Feldman*, 460 U.S. at 476;482 n. 16. Thus the *Rooker-Feldman* doctrine prohibits District Courts from adjudicating actions in which the relief requested requires determining that the state's decision is wrong or voiding the state court's ruling.

Since *Feldman*, this Court has provided very little guidance to inferior federal courts for determining which federal claims are "inextricably intertwined" with a prior state court judgment and which are not for purposes of this doctrine. However, Justice Marshall, concurring in *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 23; 25(1987), pointed out that while the question of

> whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim

> succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of a state-court judgment.

Id. The pivotal inquiry, therefore, is "whether the federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim...." *Long v. Shorebank Dev. Corp.*, 182 F.2d 548, 555(7th Cir. 1999) quoting *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506, 510(7th Cir. 1996), *cert. denied*, 520 U.S. 1204(1997).

In order to determine whether a decision favorable to the federal plaintiff would render a prior state court decision wrong or would render it void for purposes of applying the *Rooker-Feldman* doctrine, all of the federal circuit courts of appeal have found it necessary to identify the pillars on which the state court judgment rests. See, e.g., *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 421-422(3rd Cir. 2003); *Peterson Novelties, Inc. v. City of Berkley*, 305 F.3d 386, 392-393(6th Cir. 2002); *Remer v. Burlington Area School Dist.*, 205 F.3d 990, 997-998(7th Cir. 2000); *Hill v. Town of Conway*, 193 F.3d 33, 39-40(1st Cir. 1999); and *Canal Capital Corp. v. Valley Pride Pack, Inc.*, 169 F.3d 508, 512-513(8th Cir. 1999). In order to accomplish this task, the courts of appeal routinely have considered the questions of state law which the state court was obligated to reach in order to render its

decision. *Id.*

Where the plaintiff's federal claim(s) is "qualitatively different" than the questions of state law decided by the state court, see *Remer*, 205 F.3d at 998, where the federal issue is "not identical" to the issue decided by the state court, see *Canal Capital Corp.* , 169 F.3d at 513, where the state court did not discuss the federal issue, see *Peterson Novelties, Inc.*, 305 F.3d at 392, or where a disposition on the federal claim cannot be reasonably implied by the state court's ruling, *Desi's Pizza, Inc.*, 321 F.3d at 424-426, application of the *Rooker-Feldman* doctrine to reject subject matter jurisdiction over a plaintiff's subsequent federal complaint was error. *Id.*

Importantly, in *Desi's Pizza, Inc.*, 321 F.3d at 425, the Court of Appeals for the Third Circuit made the point that where the federal claim required proof of motive/intent to discriminate, it was not "inextricably intertwined" with a state court judgment which simply adjudicated the plaintiff's liquor code violation.

Here Blaisdell initially brought in District Court his federal taking claims together with his pendent state claims for the conversion of his property and related torts against the municipal defendants. His taking claims were deemed "unripe" under *Williamson County Regional Planning Comm'n v. Hamilton Bank*, *supra*, since he had not yet exhausted his state court remedies. After his remaining federal claims were dismissed in federal court and pendent jurisdiction over his state claims was declined, he was forced to bring a state court action against the municipal defendants seeking compensation for their conversion of his

personal property and other torts. All of his state claims were dismissed there except for his claim for conversion by the City of his personal property.

Blaisdell's claim in state court for damages resulting from the City's conversion of his personal property implicated proof under New Hampshire law that he had a possessory interest in that property *and* that the City *intended* to deprive him of it. *Vittum v. New Hampshire Insurance Co.*, 369 A.2d 184, 186(N.H. 1977). See generally *LePage v. St. Johnsbury Trucking Co.*, 80 A.2d 184(N.H. 1951). Thus in order to find for Blaisdell on his claim for conversion, the jury had to make two *separate* findings: (1) that Blaisdell owned or had a possessory interest in the personalty at the relevant time; and (2) that the City intended to dispossess him of his personalty through its conduct after the fire.

Instead of the jury making these two discrete findings, the special verdict form in the state court trial conflated these two separate questions into one question: it asked the jury to determine Blaisdell's ownership of his personalty *together with* its determination of whether the City through its agents or employees had *intentionally* destroyed [this] personal property...and that they knew [Blaisdell] claimed the possessory interest."(App. 17)(emphasis supplied). Because of this confusion in the question, the jury's negative response left no definitive way to know on this record whether it had found that Blaisdell did not own the personalty or that the City had not intentionally destroyed or converted it.

The same is true for Blaisdell's claim that the City had converted his three motor vehicles. The jury's negative response to the question of whether Blaisdell owned them or had a right to possess or control them was confused with its same negative response to the question of whether the City had "*intentionally* retained [them] on or after April 4, 1993, and denied [Blaisdell] possession" (App. 18)(emphasis supplied). There is no definitive way to know on this record whether it had found that Blaisdell did not own the vehicles or that the City had not intentionally destroyed or converted them.

For these reasons, the jury's subsequent findings on the City's affirmative defenses of abandonment, public duty and authorization are suspect and do not inevitably lead to a conclusion that Blaisdell does not own the personalty for the loss of which he sought damages, especially in view of the jury's final finding that the City was 10% "at fault" for the loss of *Blaisdell's* personal property which he had sustained (App. 18-19).

None of this indefinite, inconclusive state court record on Blaisdell's claim for the conversion of his personalty by the City supports the positive assertion that Blaisdell's federal taking claim was addressed in those proceedings. Indeed, this Court has been assiduous in its protection of the distinction between common law causes of action sounding in tort and the taking of private property by the government. In *United States v. Dickinson*, 331 U.S. 745, 748-749(1947), this Court, speaking through Justice Frankfurter, made the point that a claim for the taking of property by government is not subject to the "theory-ridden"

concept of a "cause of action." *Id.* at 748. The Fifth Amendment's prohibition against takings "is 'intended to preserve practical and substantial rights, not to maintain theories.'" *Id.* quoting *Davis v. Mills*, 194 U.S. 451, 457(1904)(Holmes, J.).

As Justice Frankfurter further observed in *Dickinson*,

> [p]roperty is taken in the constitutional sense when inroads are made upon an owner's use of it to the extent that, as between private parties, a servitude has been acquired either by agreement or in the course of time. The Fifth Amendment expresses a principle of fairness and not a technical rule of procedure enshrining old or new niceties regarding "causes of action"— when they are born, whether they proliferate, and when they die.

Id. at 748. *Accord, Davis v. Mills, supra*("It is pretty safe to assume that when the law may deprive a man of all the benefits of what once was his, it may deprive him of technical title as well."). See also *Busky v. Town of Hanover*, 577 A.2d 406, 409(N.H. 1990); *In Re Forfeiture of 1976 Kenworth Truck*, 576 So.2d 261,263(Fla. 1990).

Thus the indefinite state-court resolution of Blaisdell's claim against the City for its conversion of his personalty was "qualitatively different" than his federal taking claim, see *Remer*, 205 F.3d at 998, was"not identical" to his federal taking claim, see *Canal*

Capital Corp., 169 F.3d at 513, did not discuss the federal issue, see *Peterson Novelties, Inc.*, 305 F.3d at 392, and could not reasonably imply a disposition of his federal taking claim. *Desi's Pizza, Inc.*, 321 F.3d at 424-426. The lower federal courts in this case have therefore misapplied this Court's *Rooker-Feldman* doctrine to reject subject matter jurisdiction over Blaisdell's federal complaint for the taking of his personal property without just compensation. See *Agripost v. Miami-Dade County*, 195 F.3d 1225, 1232(11th Cir. 1999).

This fundamental error justifiably invokes this Court's duty of superintendence of the federal judiciary to insure that it provides meaningful remedies to civil rights plaintiffs such as Blaisdell and warrants the granting of this Petition.

In the alternative, there would have been no sound reason for either of the lower federal courts to rely upon the doctrine of collateral estoppel to find that Blaisdell was barred from bringing his civil rights action in federal court for the taking of his personal property in the aftermath of the state court judgment. New Hampshire law governs the reach of the preclusive effect of issues decided by its own judgments. *Peterson Novelties, Inc.*, 305 F.3d at 394. *Remer*, 205 F.3d at 998-999. *Wicker v. Board of Educ. of Knott County, Ky.*, 826 F.2d 442, 450(6th Cir. 1987). *Bryant v. Noether*, 163 F. Supp.2d 98, 107(D.N.H. 2001).

New Hampshire law precludes a party from relitigating an issue previously decided on its merits when the current party had a full and fair opportunity to be heard, or was in privity with a party who had such

an opportunity. *Bryant v. Noether*, *supra*, citing *In re Alfred*, 495 A.2d 1264, 1266(N.H.1985). The issue subject to estoppel "must be identical in each action and the finding must have been essential to the first judgment...." *Aranson v. Schroeder*, 671 A.2d 1023, 1029(N.H.1995) quoting *Day v. N.H. Retirement Systems*, 635 A.2d 493, 495(N.H. 1993).

However, for the reasons already identified, there was no identity of issues between Blaisdell's tort action in state court for the conversion of his personalty and his subsequent federal action seeking damages as just compensation for the taking of that same personal property. Blaisdell is accordingly not precluded by the doctrine of collateral estoppel from bringing his federal claim because the state court could not and did not adjudicate the merits of his constitutional claim. *Gulla v. North Strabane Tp.*, 146 F.3d 168, 173(3rd Cir. 1998). *Wicker*, 826 F.2d at 451.

2. Important Policy Reasons And the Interests Of A Pragmatic Federalism Justify The Granting Of The Petition.

As a matter of a pragmatic federalism, this Court should limit in civil rights actions the force of the *Rooker-Feldman* doctrine to only those actions which seek a direct order to a state court to change the result it has already reached. As this Court stated in *England v. Medical Examiners*, 375 U.S. 411, 417(1964):

> The possibility of appellate review by this Court of a state court determination may not be substituted, against a party's wishes, for his right to litigate his claims

> fully in the federal courts. We made this clear only last Term in *NAACP v. Button*, [371 U.S. 415, 427(1962)], when we said that "a party has the right to return to the District Court, after obtaining the authoritative state court construction for which the [federal] court abstained, for a final determination of his claim."

Id.

As presently conceived, the *Rooker-Feldman* doctrine, contrary to the *England* Court's wishes, is frequently and unfairly invoked by the lower federal courts to deny a hearing to a civil rights plaintiff on his federal claims in the wake of a state-court decision addressing collateral state issues. See *Ahmed v. Washington*, 276 F.3d 464, 474(9th Cir. 2001)(Noonan, J., dissenting). As Judge Noonan observes, it is a harsh rule, without contours, which facilitates "house-cleaning" by federal district courts in an effort to clear their dockets at the expense of civil rights plaintiffs who have been unnecessarily shuttled back and forth between state and federal court in order to vindicate constitutional rights as well as rights created by Congress, all the while incurring more and more legal fees. *Id.* at 474-475. See also *England*, 375 U.S. at 425-426(Douglas, J., concurring).

Considering the analogous doctrines of res judicata, abstention, comity and collateral estoppel already available to the district courts in order to avoid ruling on federal claims previously adjudicated in the state forum, the *Rooker-Feldman* rationale, as presently conceived, is outmoded, misapplied and

redundant. It deserves to be reinterpreted by this Court so that it applies only those actions which seek a direct order to a state court to change the result it has already reached.

3. The Ripeness Requirement of *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172(1985) Is Met In The Circumstances Of This Case.

In *Williamson*, this Court ruled that until a putative federal plaintiff seeking relief for a taking without just compensation under the Fifth Amendment had exhausted his state legal and administrative remedies for this alleged loss, his claim was not "ripe" and would not be entertained in federal court. 473 U.S. at 194-195. Blaisdell attempted to satisfy *Williamson's* mandate by resorting to state court with his claim for conversion by the City. But the state law of New Hampshire, in confusing questions to the jury, required him to prove at once not only that he owned the personalty taken but also that the City *intended* to dispossess him of that property(App. 17-19). The state court had thereby failed to provide a real remedy to Blaisdell for the unconstitutional taking of his personalty.

Moreover, after Blaisdell's state court remedy of a tort action for conversion against the City failed to compensate him for his taking claim, it was now "ripe" or ready for federal adjudication within the sense of *Williamson*. *Dodd v. Hood River County*, 59 F.3d 852, 859-860(9th Cir. 1995)(Aldisert, J.). *Agripost v. Miami-Dade County*, 195 F.3d at 1232 n.16. As Judge Aldisert

observed in *Dodd*, 59 F.3d at 860,

> to hold that a taking plaintiff must first present a Fifth Amendment claim to the state court system as a condition precedent to seeking relief in a federal court would be to deny a federal forum to every taking claimant [because the requirement to ripen a claim of a *state* taking in *state* court "would not ripen the claim, rather it would extinguish the claim."]

Id.

CONCLUSION

For all of the reasons identified herein, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the First Circuit and, ultimately, to vacate the judgment below and remand the cause to the District Court for the District of New Hampshire for further proceedings and a trial on the merits of Blaisdell's taking claim; or provide the Petitioner such other relief as is fair and just in the circumstances.

Respectfully submitted,

Dennis P. Derrick
Seven Winthrop Street
Essex, Massachusetts 01929
(978)768-6610
Attorney for Petitioner

(Any footnotes trail the end of each document)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

No. 03-2075

George Blaisdell,
Plaintiff, Appellant,

v.

City of Rochester,
Defendant, Appellee.

Before

Torruella and Selya, Circuit Judges,
and Cyr, Senior Circuit Judge.

JUDGMENT

Entered: March 30, 2004

We have reviewed the parties' briefs and the record on appeal. We affirm the district court's judgment of dismissal, essentially for the reasons stated in the district court's order of June 30, 2003. See Blaisdell v. City of Rochester, No. 03-138, 2003 WL 21511117 (D. N.H. June 30, 2003).

Affirmed. See 1st Cir. R. 27(c).

By the Court:
Richard Cushing Donovan, Clerk

[Certified and Issued as Mandate under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk
[Karen M. Marzela]
Deputy Clerk
Date: [4/20/04]]

By: [Mark R. Syska]
Chief Deputy Clerk.

[cc: George Blaisdell, John P. Sherman,Esq., David M. Morse,Esq.]

[U.S. District Court District of N.H.
FILED
June 30 12:21 PM '03]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Civil Action No. 03-138-JD
Opinion No. 2003 DNH 113

George Blaisdell

v.

City of Rochester, New Hampshire

ORDER

The plaintiff, George Blaisdell, proceeding pro se, returns to this court to recover damages from the City of Rochester for the loss of property which he claims occurred when the city demolished a structure at 125 Charles Street, where Blaisdell once lived. He brings this suit under 42 U.S.C. Section 1983, alleging that Rochester deprived him of "personalty" without just compensation in violation of due process. Rochester moves to dismiss Blaisdell's claim on the grounds that it is barred by the Rooker-Feldman doctrine and collateral estoppel.\1/

Background

Blaisdell alleges that he lived at 125 Charles Street,

Rochester, New Hampshire, from December of 1970 until February of 1993. The City of Rochester claimed tax title to the house in 1985, and the city and Blaisdell litigated the issue of title to the property. On February 23, 1993, the 125 Charles Street property was damaged by fire. The city took possession of the property after the fire, removed the vehicles from the property, and had the house and garage demolished in April of 1993.

Blaisdell previously brought takings claims in this court, along with other related state law claims, arising from the removal of the vehicles and demolition of the 125 Charles Street structures. Summary judgment was granted in favor of the city on the takings claim because Blaisdell failed to show that the State of New Hampshire did not provide adequate post-deprivation remedies and because the record demonstrated that the city, not Blaisdell, held legal title to the real property at 125 Charles Street. Blaisdell then brought suit in state court against the city and other defendants, alleging conversion of personal property, malicious prosecution, intentional infliction of emotional distress, and civil conspiracy.

The state court granted summary judgment in the defendants' favor except as to the conversion claim against the city. After a two-week trial on the conversion claim in February of 2002, the jury found against Blaisdell. Responding to questions on the verdict form, the jury found that Blaisdell did not own or have a right to possess or control any of the personal property, including motor vehicles, at 125 Charles Street and that the city was authorized to demolish the structure at 125 Charles Street.

Blaisdell's suit here alleges that "[t]he City violated Blaisdell's right to just compensation under the fifth and fourteenth Amendments to the United States Constitution regarding the seizure, the destruction, and the taking of Blaisdell's personalty, which personalty Blaisdell had a legally recognized property right in, including actual possession and title to the said personalty, in that the City has paid Blaisdell no just compensation as required." Complaint, paragraph 33.

Discussion

In considering a motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the court accepts the facts alleged in the complaint as true and draws all reasonable inferences in favor of the plaintiff. Calderon-Ortiz v. Laboy-Alvarado, 300 F.3d 60, 63(1st Cir. 2002). The court must determine whether the complaint, construed in the proper light, "alleges facts sufficient to make out a cognizable claim." Carroll v. Xerox Corp., 294 F.3d 231, 241(1st Cir. 2002). The court may also draw from undisputed court documents generated in proceedings referenced in the complaint. See Prisma Zona Exploratoria de P.R. v. Calderon, 310 F.3d 1, 2(1st Cir. 2002).

Rochester contends that Blaisdell's takings claim is barred by the Rooker-Feldman doctrine due to the state court judgment against Blaisdell on his conversion claim, based on the same alleged property loss. Alternatively, Rochester asserts that the claim is barred by collateral estoppel. Blaisdell believes that because he originally brought the takings claim in this court and the claim was denied when he failed to show that the state did not provide adequate post-

deprivation remedies, he is now entitled to pursue the claim, having lost in state court. Blaisdell is mistaken.

The Rooker-Feldman doctrine prohibits lower federal courts from reviewing state court judgments. Picard v. Members of Employee Retirement Bd., 275 F.3d 139, 145(1st Cir. 2002). Lower federal courts are barred from reviewing any claim that is "inextricably intertwined" with claims decided in state court. Sheehan v. Marr, 207 F.3d 35, 40(1st Cir. 2000). Claims are inextricably intertwined "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." Hill v. Town of Conway, 193 F.3d 33, 39 (1st Cir. 1999).

To state a takings claim, Blaisdell must allege facts to show that he had a legally recognized interest in property that was taken by the city without just compensation. See Blaisdell v. City of Rochester, Civil No. 97-82-M, at 5-6 (D.N.H. Jan. 4, 1999). Blaisdell alleges that he had legally recognized property rights in "personalty" that was located at 125 Charles Street.\2/

Contrary to Blaisdell's allegations here, the jury in the state proceeding found that he did not own or have the right to possess or control any of the personal property he claimed at 125 Charles Street.\3/ For Blaisdell to succeed on his takings claim in this court, the factfinder would necessarily have to decide that Blaisdell owned or had property rights in the personalty he claims so that the state determination was wrong. Such a determination is therefore inextricably intertwined with the state court determination and is barred by Rooker-Feldman.

Due process requires a constitutionally adequate review process but does not guarantee that a claimant will be successful. See Amsden v. Moran, 904 F.2d 748, 756 (1st Cir. 1990). Blaisdell has pointed to nothing in the state proceeding that would suggest an unconstitutional deprivation of due process.\4/ Therefore, Blaisdell's taking claim is barred by the Rooker-Feldman doctrine and is dismissed.

Conclusion

For the foregoing reasons, the defendant's motion to dismiss (document no. 4) is granted. The clerk of court shall enter judgment accordingly and close the case.

SO ORDERED.

[Joseph A. DiClerico, Jr.]
Joseph A. DiClerico, Jr.
United States District Judge

June 30, 2003
cc: George Blaisdell, pro se

Footnotes

\1/ See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462(1983); Rooker v. Fidelity Trust Co., 263 U.S. 413(1923).

\2/ "Personalty" is defined as" "Personal property: movable property; chattels; property that is not attached to real estate." Black's Law Dictionary 1144 (6th ed. 1990).

\3/ It was previously determined in this court that the city held legal title to the real property at 125 Charles Street. See George Blaisdell v. City of Rochester, Civil No. 97-82-M, at 6-7 (D.N.H. October 19, 1999).

\4/ Although Blaisdell emphasizes the differences between his conversion claim brought in state court and his takings claim here, he does not explain why he did not bring the takings claim in state court.

[U.S. District Court District of N.H.
FILED
Jan 4 3:43 PM '99]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Civil Action No. 97-82-M

George Blaisdell,
Plaintiff

v.

City of Rochester, New Hampshire;
Gary Stenhouse; Danford J. Wensley;
Donald L. Vittum; and James Twombley,
Defendants

ORDER

George Blaisdell seeks $21 Million in damages, plus interest and attorney's fees, for losses and personal injury he claims to have sustained when the City of Rochester demolished the structure in which he had been living (after it had been severely damaged by fire). Among other things, Blaisdell alleges that defendants conspired to violate the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Section 1862 ("RICO"), violated his state and federal constitutional rights, and committed various common law torts. The background to this dispute, as well as Blasidell's factual allegations (gleaned from his

complaint), are set forth in the court's prior order. See Blaisdell v. City of Rochester, No. 97-82-M (D.N.H. August 28, 1998). Accordingly, they need not be recounted again. In sum, Blaisdell contends that defendants destroyed his real and personal property without adequate cause and without providing him just compensation.

Defendants deny any wrongful conduct and contend that the City, not Blaisdell, holds title to the subject real estate, through a properly recorded tax deed. Moreover, regardless of who owns the disputed property, defendants say that the buildings located on that property were lawfully demolished. Initially, the structures were damaged (beyond the substantial damage caused by the fire) as a necessary part of the Fire Marshal's investigation into the cause of the fire. Following that investigation, and after they were deemed to present a real and present danger to the public, the buildings were demolished.

Defendants move for summary judgment as to count 1 of Blaisdell's complaint, in which he seeks damages pursuant to 42 U.S.C. Section 1983 for alleged violations of his constitutional rights to procedural due process and just compensation.\1/

Blaisdell claims that defendants failed to comply with the provisions of N.H. Rev. Stat. Ann. ("RSA") ch. 155-B, which establish a procedure by which cities and towns may "order the owner of any hazardous building within the municipality to correct the hazardous condition of such building or to raze or remove the same." RSA 155-B:2. By failing to comply with the provisions of that statute, Blaisdell says defendants

deprived him of real and personal property without due process or just compensation in violation of his constitutional rights.

Defendants seem to suggest that because the City owns the subject property, it was not required to comply with RSA 155-B prior to any demolition. In any event, defendants contend that Blaisdell's due process/unlawful taking claim is barred (or, at a minimum, not yet ripe) because he failed to pursue his state legal or administrative remedies aimed at securing just compensation for his alleged loss. Blasidell counters that defendants have failed to establish that the State of New Hampshire provides any such legal or administrative remedies.

Standard of Review

Summary judgment is appropriate when the record reveals "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When ruling upon a party's motion for summary judgment, the court must "view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor." Griggs-Ryan v. Smith, 904 F.2d 112, 115(1st Cir. 1990).

The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323(1986). If the moving party carries its burden, the burden shifts to the nonmoving party to demonstrate,

with regard to each issue on which it has the burden of proof, that a trier of fact could reasonably find in its favor. See DeNovellis v. Shalala, 124 F.3d 298, 306(1st Cir. 1997).

At this stage, the nonmoving party "may not rest upon mere allegation or denials of [the movant's] pleading, but must set forth specific facts showing that there is a genuine issue" of material fact as to each issue upon which he or she would bear the ultimate burden of proof at trial. Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256(1986). In this context, "a fact is 'material' if it potentially affects the outcome of the suit and a dispute over it is 'genuine' if the parties' positions on the issue are supported by conflicting evidence." Intern'l Ass'n of Machinists and Aerospace Workers v. Winship Green Nursing Center, 103 F.3d 196, 199-200(1st Cir. 1996) (citations omitted).

Discussion

The court (DiClerico, J.) recently addressed the elements of a viable claim, under 42 U.S.C. Section 1983, for deprivation of procedural due process.\2/

To state a Fourteenth Amendment procedural due process claim based on the deprivation of a property interest, the plaintiff must allege first that it has a property interest as defined by state law and second, that the defendants, acting under color of state law, deprived it of that property interest without constitutionally adequate process. To determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate. Therefore, to

state a viable claim, a plaintiff must allege the unavailability of constitutionally-adequate remedies under state law.

Giant Lift Equip. Manufacturing Co., Inc. v. Town of North Hampton, No. 97-470-D, slip op. at 8 (D.N.H. November 17, 1998) (citations and quotation marks omitted). See generally, Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 194 n. 13 (1985)("because the Fifth Amendment proscribes takings without just compensation, no constitutional violation occurs until just compensation has been denied. The nature of the constitutional right therefore requires that a property owner utilize procedures for obtaining compensation before bringing a Section 1983 action.")(emphasis in original).

Aside from generally denying that the State of New Hampshire provides him with any legal or administrative post-deprivation remedies by which he might secure just compensation for his alleged loss, Blaisdell has done little to demonstrate that he is without an adequate state remedy. That response is inadequate. As Justice O'Connor observed in her concurring opinion in Hudson v. Palmer, 468 U.S. 517(1984):

Of course, a mere allegation of property deprivation does not by itself state a constitutional claim under either [the Due Process or Takings] Clause. The Constitution requires the Government, if it deprives people of their property, to provide due process of law and to make just compensation for any takings. The due process requirement means that government must provide to the [claimant] the remedies it promised

would be available. Concomitantly, the just compensation requirement means that the remedies made available must adequately compensate for any takings that have occurred. Thus, in challenging a property deprivation, the claimant must either avail himself of the remedies guaranteed by state law or prove that the available remedies are inadequate.

Id., at 539 (emphasis supplied). Here, Blaisdell has failed to carry that burden. He has neither demonstrated that the State of New Hampshire provides him with no adequate post-deprivation remedy (whether statutorily or at common law) nor has he shown that availing himself of such a remedy would be futile or provide him with inadequate compensation.

Conclusion

For the foregoing reasons, defendants are entitled to judgment as a matter of law as to Count 1 of Blaisdell's complaint. Their motion for summary judgment (document no. 42.2) is, therefore, granted as to Count 1.

Parenthetically, the court notes that neither party has addressed an issue of apparent significance: who holds legal title to the subject real property? Although the parties have alluded to various court proceedings in which that issue has been raised, neither has informed the court whether those proceedings have concluded and, if so, how they were resolved.

Accordingly, on or before January 29, 1999, plaintiff and defendants shall each file a legal memorandum which addresses in detail (and with appropriate legal and/or factual support) the following issues:

a. Whether (and, if appropriate, how) the state court proceedings in which title to the subject property was being litigated were resolved;

b. If those state court proceedings are ongoing, whether the court should abstain or otherwise defer ruling on plaintiff's claims until the underlying dispute concerning title to the subject property is resolved.

Plainly, if the dispute concerning ownership of the real property at issue in this case is subject to either an existing state court order resolving the parties' dispute or ongoing state litigation, this court would seem to be an inappropriate forum in which to also litigate (re-litigate) it.

After the parties have submitted their legal memoranda addressing the issues identified above, the court will schedule a pretrial conference to address those issues and get this litigation on track for trial.

SO ORDERED

[Steven J. McAuliffe]
Steven J. McAuliffe
United States District Judge
January 4, 1999
cc: Matthew Cobb, Esq.
Donald e. Gardner, Esq.

Footnotes

\1/ Defendants also move for summary judgment as to count 10 of plaintiff's complaint. However, in its order dated August 28, 1998, the court dismissed that count.

\2/ Plaintiff does allege that his rights to substantive due process were violated.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

00-C-296

GEORGE BLAISDELL

v.

CITY OF ROCHESTER

SPECIAL VERDICT FORM

1. Do you find the plaintiff has proven by a preponderance of the evidence that

a. The plaintiff owned or had the right to possession or control of any personal property at 125 Charles Street; and

b. The defendant through its agents or employees intentionally destroyed any personal property of the plaintiff on or after April 4, 1993 and that they knew the plaintiff claimed the possessory interest?

YES__ NO X

2. Do you find the plaintiff has proven by a preponderance of the evidence that

a. The plaintiff had ownership or the right to possession or control of three motor vehicles removed by the defendants or its agents; and

b. The defendant through its agents or employees intentionally retained the three motor vehicles on or after April 4, 1993 and denied the plaintiff possession?

YES__ NO X

3. Do you find by a preponderance of the evidence that the plaintiff had abandoned the personal property at 125 Charles Street prior to or at the time of the demolition?

YES X NO__

4. Do you find by a preponderance of the evidence the three motor vehicles removed by the City were abandoned by the plaintiff?

YES X NO__

5. Do you find by a preponderance of the evidence that any destruction of the personal property at 125 Charles Street was pursuant to any duty created by law to preserve and protect the public safety, health, peace, or other public interest and the destruction was reasonably necessary to the performance of this duty?

YES X NO__

6. Do you find by a preponderance of the evidence that the defendant was authorized by an order of the Court or by law to demolish the real property at 125 Charles

Street and the personal property contained therein on or after April 4, 1993?

YES_X_ NO__

7-A. Do you find by a preponderance of the evidence that the plaintiff was at fault to any degree for any losses he might have sustained?

YES_X_ NO__

B. If the answer is "Yes," please assign percentages of fault to both the City defendant and the plaintiff, Blaisdell.

DEFENDANT CITY 10 %
PLAINTIFF 90 %
TOTAL 100 %

March 6, 2002

Meredith W. Weiss
Foreperson